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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NATASHA AYALA, as an individual
and as a representative party under the
California Private Attorney General
Act (PAGA); KELLEN SHAW, as an
individual and as proposed class
representative under Fed. R. Civ. Proc.
23;

Plaintiffs,

vs.

AT&T MOBILITY SERVICES, LLC,
a Delaware Limited Liability
Company; and Does 1 through 100,
inclusive,

Defendants.

Case No.: 2:18-cv-08809-FLA-MRW

Hon. Fernando L. Aenlle-Rocha

CLASS ACTION

**PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: October 13, 2023

Time: 1:30 P.M.

Courtroom: 6B

Complaint filed: Aug. 22, 2018

Removed: Oct. 12, 2018

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at 1:30 p.m. on October 13, 2023, before the Honorable Fernando L. Aenlle-Rocha, United States District Judge, in Courtroom 6B of the United States District Court for the Central District of California, located at 350 West First Street, Los Angeles, California 90012, Plaintiff Kellen Shaw (“Plaintiff”) will move this Court for an Order Granting Final Approval of the settlement of this putative class action. Good cause exists for the granting of this Motion in that the proposed settlement is fair, reasonable, and adequate.

The Motion will be based on this Notice of Motion and Motion, Memorandum of Points and Authorities, the Declaration of Attorney Jason Hatcher, Plaintiff Kellen Shaw, Declaration from Bryn Bridley (agent of Third-Party Settlement Administrator, Atticus Administration), the concurrently filed Motion for Class Counsel Fees, Cost Reimbursement, and Service Payment, Plaintiff’s Motion for Preliminary Approval (including supporting documents) and on such oral and documentary evidence as may be presented before or at the hearing of the Motion.

DATED: September 15, 2023

Respectfully submitted,
THE MYERS LAW GROUP, A.P.C.

By: /s/Jason Hatcher
David P. Myers,
Robert M. Kitson,
Jason Hatcher,
Attorneys for Plaintiff Shaw and all
others similarly situated.

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1 **I. INTRODUCTION**

2 Plaintiff Kellen Shaw (“Plaintiff” or “Class Representative”) seeks final
3 approval of the proposed Class Action Settlement Agreement (“Settlement
4 Agreement” or “Settlement”) that was Preliminarily Approved by this Court on June
5 20, 2023. [Dkt. 81]; [Dkt. 73-3].¹

6 The proposed Settlement is a *non-reversionary*, Gross Settlement Amount
7 (“GSA”) of ***One Hundred and Fifty Thousand Dollars and Zero Cents***
8 **(\$150,000.00)** to be paid by Defendant AT&T Mobility Services, LLC. (“Defendant”)
9 in exchange for a release of claims that are narrowly tailored to the facts and claims
10 asserted in the instant action. *See* [Dkt. 73-3. at ¶¶ 2, 4, 5, 37, 38].

11 *No Class Member opted-out of the Settlement or objected to the terms of the*
12 *Settlement*, after the settlement notices were mailed and the 30 day notice period
13 expired. (Decl. Bridley at ¶¶ 11).

14 The Class Settlement applies to approximately 489 individual participating
15 class members and approximately only 14,892 workweeks for the Covered Period of
16 August 22, 2014 to July 31, 2015 – the Covered Period represents a potential
17 maximum of 49 workweeks for any individual settlement class member.²

18 This yields an estimated workweek value of approximately \$5.07 [\$75,500 /
19 14,892]. As a gauge, this workweek value is almost double the value of the \$2.37
20 workweek value in the *Wallack* settlement. [Dkt. 74-5, Ex. E at ECF p. 12:27-28].

21 As a further gauge, this yields an “average” class member payment of ***\$154.40***
22 **(\$75,500 / 489)**, subject to the *pro rata* calculation for settlement class members’
23 individual payment.

24 It is estimated that approximately 63% of the Settlement Class (approx. 309
25

26 ¹ This Motion incorporates by reference the definitions in the Settlement Agreement. All defined terms contained herein
shall have the same meaning as set forth in the Settlement Agreement.

27 ² Pursuant to Footnote 2 in the Motion for Preliminary Approval, the estimated 20,580 workweeks in the Motion for
28 Preliminary Approval was high and based on applying the maximum number of workweeks for the estimated Settlement
Class Size. Accordingly, even though the actual class size is more than previously estimated, the workweeks are far less,
yielding a higher workweek value. *See* [Dkt. 73-1 at p. 8, Fn. 2].

1 individuals) will receive class settlement payments *in excess of \$100.00* for a very
2 limited Covered Period. (Decl. Hatcher ¶ 18).

3 This is a significant recovery. Plaintiff and Class Counsel believe that the
4 proposed settlement is fair, reasonable, and adequate given the known facts and
5 circumstances. (Decl. Hatcher ¶¶ 19, 20); (Decl. Shaw ¶¶ 10, 15).

6 Accordingly, based on this Motion (including any supporting documentation)
7 and in the papers previously submitted in support of approval, Plaintiff Shaw
8 respectfully requests that this Court grant final approval of the proposed settlement;
9 conforms the appointment of (1) Atticus Administration (“Atticus” or the “Settlement
10 Administrator”) as the Settlement Administrator; (2) Kellen Shaw, the Named
11 Plaintiff, as the Settlement Class Representative; (3) David P. Myers, Robert M.
12 Kitson, and Jason Hatcher of The Myers Law Group, A.P.C. as Class Counsel for the
13 Settlement Class; and enter (4) judgement in accordance with the terms of the
14 Settlement Agreement.

15 **II. CASE HISTORY AND OVERVIEW**

16 **A. FACTUAL AND PROCEDURAL BACKGROUND**

17 On August 22, 2018, Plaintiff Natasha Ayala (“Ayala”) filed a class action
18 complaint in the Superior Court for the State of California, County of Los Angeles
19 which alleges violations of California Labor Code and B&PC claims: (1) Failure to
20 Pay Overtime Wages; (2) Failure to Provide Rest Periods; (3) Failure to Pay Wages
21 Due at Separation; (4) Failure to Provide Accurate Wage Statements; and (5) Unfair
22 Competition. *See* [Dkt. 1-2, Ex. 3].

23 On October 15, 2018, Defendant removed the action to the Central District of
24 California under the Class Action Fairness Act (“CAFA”). [Dkt. 1]. On December
25 10, 2018, Ayala filed a First Amended Complaint, adding a Private Attorneys General
26 Act cause of action. [Dkt. 14].

27 On April 1, 2019, Ayala filed a Motion for Class Certification and Motion for
28 Leave to file a Second Amended Complaint (“SAC”). [Dkts. 28 and 30]. On April 25,

1 2019, the Court granted Ayala leave to file the SAC and ordered a renewed Motion
2 for Class Certification be filed. [Dkt. 37]. On April 29, 2019, Ayala filed the SAC,
3 adding a cause of action for violation of Labor Code §§ 512, 226.7 and Wage Order
4 4. [Dkt. 38].

5 On June 3, 2019, Ayala filed her Renewed Motion for Class Certification. [Dkt.
6 40]. On September 25, 2019, the Court denied Ayala's Renewed Motion for Class
7 Certification after it found Ayala was not an adequate class representative and that her
8 claims were not typical of the putative class. [Dkt. 51]. The court did not reach any
9 conclusions regarding the requirements of Rule 23(b). *Id.* at p.8. In its order, the Court
10 provided Ayala leave to amend to add a new class representative. *Id.*

11 On October 16, 2019, Ayala filed a Third Amended Complaint ("TAC"),
12 replacing Ayala with Plaintiff Kellen Shaw as the proposed Rule 23 class
13 representative and leaving Ayala as the PAGA representative. [Dkt. 52].

14 In the TAC, Plaintiff asserts the following claims: (1) violation of Labor Code
15 §§510, 1194 (overtime), (2) violation of Labor Code §226.7 (rest periods), (3)
16 violation of Labor Code §226(a) (wage statements), (4) violations of Labor Code
17 §§201 and 202, et seq. (waiting time penalties), (5) violation of Cal. Bus. & Prof. Code
18 §§17200, et seq., (6) violation of the Private Attorneys General Act ("PAGA"), Labor
19 Code §§2698, et seq.; and (7) Violation of Labor Code §§ 512, 226.7 and Wage Order
20 4. [Dkt. 52].

21 Following the filing of the TAC, in light of multiple pending California
22 Supreme Court matters based on Court of Appeal decisions that impacted the claims
23 at issue in this action, and the lack of finality of said decisions, the parties jointly
24 stipulated, and the Court ordered, that Plaintiff be provided leave to amend to file a
25 Fourth Amended Complaint seven (7) days after the *Ferra v. Lowes Hollywood Hotel,*
26 *LLC*, 40 Cal. App. 5th 1239, decision became final and that Defendant be provided 14
27 days after service of the Fourth Amended Complaint to file its response. [Dkts. 53,
28 54].

1 On July 15, 2021, the California Supreme Court issued a decision in *Ferra*
2 ruling that the phrase “regular rate of compensation” under Labor Code §226.7 to be
3 synonymous to “regular rate of pay” as used in Labor Code §510(a). *See Ferra v.*
4 *Loews Hollywood Hotel, LLC*, 11 Cal 5th 858, 864 (2021).

5 Between October 2019 and July 2021, this Action was at a stand-still due to the
6 California Supreme Court’s review of *Ferra*. One week after the California Supreme
7 court issued its decision in *Ferra*, Defendant provided notice of four other related
8 cases, including *Wallack, et al. v. AT&T Mobility Services, LLC* (San Bernardino
9 Superior Court Case No. CIVSB2117915), filed June 22, 2021, then pending in San
10 Bernardino Superior Court, Case No. CIVSB2217915 (“*Wallack*”). [Dkt. 58].

11 On August 11, 2021, the plaintiffs in the *Wallack* Action filed a Motion for
12 Preliminary Approval of Class Action Settlement. [Dkt. 74-2, Ex. B].

13 On September 29, 2021, Defendant filed its Motion to Dismiss the Third
14 Amended Complaint. [Dkt. 62]. Plaintiff opposed Defendant’s Motion to Dismiss and
15 the matter was taken under submission on November 8, 2021.

16 On November 2, 2021, preliminary approval was granted in the *Wallack* Action.
17 [Dkt. 74-3, Ex. C at 2:9]. The mediation in the *Wallack* matter took place on March
18 29, 2021. [Dkt. 74-1, Ex.-A - *Wallack* Settlement at ¶16]. The *Wallack* settlement
19 entails a larger settlement class, which overlaps and subsumes the putative class in
20 this matter, for the period of time from August 1, 2015 to November 2, 2021. [Id. at
21 ¶¶ 2, 4]; [Dkt. 74-4, Ex. D]; [Dkt. 74-2, Ex. B at 14:3-7].

22 Plaintiff Shaw and Plaintiff Ayala unsuccessfully attempted to intervene in the
23 *Wallack* matter. [Dkt. 74-4, Ex. D at Fn. 1]. The *Wallack* Settlement was modified at
24 the preliminary approval hearing to add Plaintiff Shaw and Plaintiff Ayala as class
25 members, both of whom subsequently opted-out of the *Wallack* Settlement.

26 On February 4, 2022, Plaintiff and AT&T submitted a Notice of Settlement to
27 this Court advising the Court of a settlement in principle reached between the parties
28 covering claims at-issue in this matter for the period of time preceding the *Wallack*

1 Settlement. [Dkt. 67]. On February 22, 2022, the Court denied Defendant's Motion to
2 Dismiss as moot. [Dkt. 68].

3 Plaintiff Shaw and Class Counsel conducted sufficient discovery and
4 investigation to prepare for class certification and trial in this action. This includes,
5 but is not necessarily limited to, obtaining responses to two sets of Request for
6 Production of Documents; two sets of Interrogatories; conducting two separate
7 depositions of Defendant's Rule 30(b)(6) deponents; obtaining over a thousand pages
8 of documents from Defendant; and timekeeping and payroll records. [Dkt. 73-2 at
9 ¶10].

10 Accordingly, through this extensive discovery and motion practice in this
11 action, Class Counsel were well positioned to evaluate the strengths and
12 vulnerabilities of the claims and to engage in settlement discussions that eventually
13 led to this settlement. It is based on the substantial efforts, investigation, and
14 collaboration of Class Counsel and Plaintiff that the instant settlement was reached.
15 [Id. at ¶¶ 9-16].

16 **B. PRELIMINARY APPROVAL AND SETTLEMENT NOTICE**

17 After the Settlement was fully executed in this case, Plaintiff filed her Motion
18 for Preliminary Approval on May 31, 2022. [Dkt. 73-1]

19 On June 20, 2023, this Court granted Preliminary Approval and conditionally
20 certified the Settlement Class, appointing Plaintiff's counsel as Class Counsel and
21 Plaintiff as Class Representative. [Dkt. 81].

22 On July 13, 2023, Atticus Administration sent the Settlement Notice via First
23 Class Mail to the Settlement Class. (Decl. Bridley at ¶7). Of the 489 Notices, 21 were
24 ultimately undeliverable prior to the response cutoff after Atticus Administration used
25 a professional search firm to address trace 42 of the 49 returned notices. (Id. at ¶8).
26 Atticus also set up a website at <https://www.shawattsettlement.com/>. *See also* (Decl.
27 Bridley at ¶ 9 and Ex. A at pg. 2) (Bridley's declaration by mistake lists the address
28 as www.shawsettlement.com).

As of the August 12, 2023 deadline, there are **ZERO** objections, **ZERO** opt-outs from the Settlement. (Decl. Bridley at 11).

III. SUMMARY OF THE PROPOSED SETTLEMENT

The terms of the settlement are set forth in the Settlement Agreement. [Dkt. 73-3]; [Dkt. 73-3 at ¶ 66].

A. The Settlement Class

The Settlement Class consists of:

All current and former hourly non-exempt employees who worked for AT&T Mobility Services LLC at any call center in the State of California at any time from *August 22, 2014, to July 31, 2015*, and received commission payments.³ [Dkt. 73-3 at ¶2].

This is consistent with the Court’s conditional certification order.

B. The Settlement Allocations

The Settlement provides a non-reversionary Gross Settlement Amount (“GSA”) of ***\$150,000.00*** [Dkt. 73-3 at ¶29]. This GSA includes all Individual Settlement Class Member Payments, Settlement Administration Costs, Class Counsel Litigation Expenses, Class Counsel Fees, and Plaintiff’s Enhancement Award. [Id. at ¶¶ 29-33].

Gross Settlement Amount	\$150,000.00
Class Counsel Fees	\$50,000.00
Class Counsel Litigation Expenses	\$7,500.00
Settlement Administration Costs	\$12,000.00
Plaintiff Shaw Service Award	\$5,000.00
Net Settlement Amount	\$75,500.00
Class Portion of the Settlement	
Number of Participating Class Members	489
Number of Objections	0
Number of Opt-Outs	0
Average Class Member Payment	\$154.40
Estimated Number of Payments over \$100.00	309

³ Excluded from the Class definition is Natasha Ayala given her settlement of all of her individual claims.

Estimated Number of Payments at \$253.82
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195

[Dkt. 73-3]; (Decl. Bridley at ¶¶ 7, 11); (Decl. Hatcher at ¶ 18). In addition to the GSA, Defendant will pay the employer-side of payroll taxes arising from any portion of the settlement shares attributable to wages. [Dkt. 73-3 at ¶ 29].

1. Individual Settlement Class Member Payments

The individual participating settlement class member payments are the product of a *pro rata* share of the NSA based on the number of weeks the settlement class member worked during the Covered Period. [Dkt. 73-3 at ¶ 33]. The “average” settlement share is \$154.40 and the estimated highest payment is \$253.82. (Decl. Bridley at ¶ 5). It is estimated that there are 195 Settlement Class Members (approximately 40% of the Settlement Class) that will receive the \$253.82 payment.

2. Notices to the Settlement Class

In accordance with the Settlement Agreement, and this Court’s Order Granting Preliminary Approval of the Settlement, Class Members were mailed a Notice of Settlement that included, but was not limited to, information regarding the nature of the litigation; a summary of the terms of the Settlement Agreement; the definitions of the Settlement Class; the projected cost for administration of the settlement; information regarding payments from the GSA; the Settlement Class Member’s estimated Class Member Payment; the formula for calculating the Class Member Payment; the dates of the Class Period; instructions for requesting exclusion from or objecting to the settlement, as well as the deadlines by which Settlement Class Members must postmark such requests or objections; the date, time and location of the Final Approval/Fairness Hearing; and the claims to be released by the Settlement Class Member. (Decl. Bridley at Ex. A).

On July 13, 2023, Atticus Administration sent the Settlement Notice via First Class Mail to the Settlement Class. (Decl. Bridley at ¶7)⁴. Of the 489 Notices, 21 were

⁴ There were a couple changes to the notice that were required to ensure the same conformed with the terms of the Settlement Agreement.

1 ultimately undeliverable prior to the response cutoff after Atticus Administration used
2 a professional search firm to trace that address of 42 of the 49 initially returned notices.
3 (Id. at ¶8).

4 **3. Narrowly Tailored Release of Claims**

5 Release of Class Claims by Class Members for the Covered Period of *August*
6 *22, 2014 to July 31, 2015*:

7 [T]he Class Members (other than those who timely and validly elected
8 not to participate in the Settlement) fully release and discharge Defendant
9 and the Released Parties of any and all known and unknown Covered
10 Claims as alleged in, and that could have been reasonably alleged based
11 on the facts of, the operative Third Amended Complaint, for the Covered
12 Period. This includes, but is not limited to, statutory, constitutional,
13 contractual or common law claims for wages, damages, unpaid costs or
14 expenses, penalties, liquidated damages, punitive damages, interest,
15 attorneys' fees, litigation costs, restitution, or equitable relief, arising out
16 of or based upon any provision of the California Labor Code, California
17 Industrial Welfare Commission Wage Orders, and California Business
18 and Professions Code § 17200, *et seq.*; including, without limitation, the
19 following categories of allegations, to the fullest extent such claims are
20 releasable by law: (a) all claims for failure to pay wages, including
21 overtime premium pay and the minimum wage; (b) all claims for the
22 failure to provide meal and/or rest periods in accordance with applicable
23 law, including payments equivalent to one hour of the employee's regular
24 rate of pay for missed meal and/or rest periods and alleged non-payment
25 of wages for meal periods worked and not taken; (c) all claims for the
26 alleged omission of any kind of remuneration when calculating an
27 employee's regular rate of pay; and (d) any and all claims for pay stub
28 violations, claims for timely payment of wages and associated penalties,
and all other non-PAGA civil and statutory penalties based on the
Covered Claims. The Class Members understand and agree that this
release includes a good-faith compromise of disputed wage claims. This
release does not apply to or cover the Non-Covered Claims or the PAGA
claim.

[Dkt. 73-3 at ¶37].

///

1 **IV. COURT SHOULD CONFIRM CLASS CERTIFICATION**

2 The Court's Order granting preliminary approval on June 20, 2023, found that
3 the Class meets all the requirements for class certification for settlement purposes.
4 [Dkt. 81 at 5:8-8:8]. Since the Court entered an order granting preliminary approval,
5 no events have occurred to cast doubt on the propriety of this determination. *Sypherd*
6 *v. Lazy Dog Rests., LLC* (C.D.Cal. Feb. 10, 2023, No. 5:20-cv-00921-FLA (KKx))
7 2023 U.S.Dist.LEXIS 23257, at *7; *see also Walker v. Life Ins. Co* (C.D. Cal. June 7,
8 2021) 2021 U.S.Dist.LEXIS 252938, at * 18. Following dissemination of the
9 Settlement Notice, **ZERO** Class Members have asserted an objection to the
10 Settlement and **ZERO** Class Members have requested exclusion from the Settlement.
11 (Decl. Bridley at ¶11). This Court should therefore confirm its conditional certification
12 of the Class.

13 **V. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

14 **A. The Law Favors Settlement in Class Actions**

15 Federal Rule of Civil Procedure 23 provides that a certified class action may
16 only be settled "with the court's approval." Fed. R. Civ. Proc. 23(e). Whether to
17 approve a class action is in the sound discretion of the trial judge." "[T]here is a strong
18 judicial policy that favors settlements, particularly where complex class action
19 litigation is concerned. *Pilkington v. Cardinal Health, Inc. (In re Syncor ERISA Litig.)*,
20 516 F.3d 1095, 1101 (9th Cir. 2008) (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d
21 1268, 1276 (9th Cir. 1992)).

22 **B. Proper Notice Has Been Provided**

23 Excepting Rules 23(e)(1)(B) and 23(e)(5), the Court already preliminary
24 approved the finding of the Rule 23(e) factors. *See* [Dkt. 81 at 8:9-11:7].

25 **1. Notice of Settlement Made Pursuant to Court's Order**

26 Rule 23(e)(1)(B) has been met as Atticus Administration provided the notice of
27 settlement to the settlement class members at a 95.71% success rate, excepting the 21
28 undeliverable notices prior to the response deadline. (Decl. Bridley at ¶ 8); [Dkt. 81];

1 *Sypherd*, 2023 U.S.Dist.LEXIS 23257, at *10-11 (approving notice success rate of
2 95.88%).

3 **2. NO Settlement Class Member Objections**

4 Demonstrating a resounding endorsement of the Settlement, **ZERO** Settlement
5 Class Members objected to the terms of the Settlement, and **ZERO** Settlement Class
6 Members opted-out of the Settlement. (Decl. Bridley at ¶ 11). Accordingly, Rule
7 23(e)(5) has been met.

8 Based on the foregoing, the Court should reaffirm the Class Notice here has
9 satisfied due process in that it fairly and adequately informed the Settlement Class of
10 the nature of the action, the terms of the proposed Settlement, the effect of the action
11 and the release of claims, their rights to make a claim or to exclude themselves, and
12 their rights to object to the Settlement.

13 **C. The Settlement is Fair, Reasonable and Adequate**

14 Under Rule 23(e)(2) if the proposed settlement would bind class members, the
15 Court may approve it only after a hearing and only on finding that it is fair, reasonable,
16 and adequate after considering whether:

17 (A) the class representatives and class counsel have adequately
18 represented the class;

19 (B) the proposal was negotiated at arm's length;

20 (C) the relief provided for the class is adequate, taking into account:

21 (i) the costs, risks, and delay of trial and appeal;

22 (ii) the effectiveness of any proposed method of distributing
23 relief to the class, including the method of processing class-
member claims;

24 (iii) the terms of any proposed award of attorneys' fees,
25 including timing of payment; and

26 (iv) any agreement required to be identified under Rule 23(e)(3);
27 and

28 (D) the proposal treats class members equitably relative to each other.

1 *Sypherd v. Lazy Dog Rests., LLC* (C.D.Cal. Feb. 10, 2023, No. 5:20-cv-00921-FLA
2 (KKx)) 2023 U.S.Dist.LEXIS 23257, at *8-9; *citing* Fed. R. Civ. P. 23(e)(2).

3 Additionally, the Ninth Circuit outlined additional factors the court may
4 consider: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and
5 likely duration of further litigation; (3) the risk of maintaining class action status
6 throughout trial; (4) the amount offered in settlement; (5) the extent of discovery
7 completed and the stage of the proceedings; (6) the experience and views of counsel;
8 (7) the presence of a governmental participant; and (8) the reaction of the class
9 members to the proposed settlement. *Id.*; *citing* *See Rodriguez v. West Publishing*
10 *Corp.*, 563 F.3d 948, 963 (9th Cir. 2009); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
11 1026 (9th Cir. 1998).

12 **1. No Objections or Opt-Outs Since the Court's Preliminary**
13 **Approval that Settlement is Fair, Reasonable and Adequate**

14 Here, the Court granted preliminary approval after finding the “each of the Rule
15 23(e)(2) factors weigh[ed] in favor of approval”. [Dkt. 81 at 11:6-7]. The Court's
16 conclusion is amply supported by the record, including the vigorous matter in which
17 this action was litigated and the complexity of the action given the *Wallack* Settlement,
18 the substantial risk for both parties continuing to trial, the straightforward and
19 effective method of relief of distribution. [Dkt. 81 at 8:22-11:7]. Indeed, this non-
20 reversionary settlement, balanced against the aforementioned factors, demonstrates
21 that the Settlement is exceptionally fair, adequate and reasonable, and that it was
22 reached in the absence of any collusion.

23 As such, the Court should affirm its prior determination that the Settlement is
24 fair, reasonable and adequate. *Sypherd*, 2023 U.S.Dist.LEXIS 23257, at *10
25 (affirming preliminary approval of Settlement as fair, reasonable and adequate at final
26 approval when there was a 95.88% notification rate and no objections or opt-outs as
27 these statistics indicate a favorable settlement to affirm the court's prior
28 determination.); *Garner v. State Farm. Mut. Auto Ins. Co.*, 2010 U.S. Dist. LEXIS

1 49477, *35, 2010 WL 1687832 at *13 (N.D. Cal. April 22, 2010); *see e.g., Rodriguez*,
2 563 F.3d at 965 (“We put a good deal of stock in the product of an arms-length, non-
3 collusive, negotiated resolution...”); *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.*,
4 221 F.R.D. 523, 528 (C.D. Cal. 2004).

5 **2. The Strength of Plaintiff’s Case Favors Final Approval**

6 “An important consideration in judging the reasonableness of a settlement is the
7 strength of plaintiff’s case on the merits balanced against the amount offered in the
8 settlement.” *Martinez*, 2021 U.S.Dist.LEXIS 260359, at *9. Moreover, “[i]t has been
9 held proper to take the bird in hand instead of a prospective flock in the bush.” *Couser*
10 *v. Comenity Bank*, 125 F. Supp. 3d 1034, 1041 (S.D. Cal. 2015).

11 Plaintiff and Class Counsel secured a fair, reasonable, and adequate settlement
12 for the Covered Period after the *Wallack* settlement effectively eliminated
13 approximately **86.9%** of the relevant time period in this action—the time period of
14 August 1, 2015 to November 2, 2021—and eradicated the PAGA cause of action.
15 [Dkt. 74-1, Ex. A at ¶4]; [Dkt. 74-3, Ex. C]. Despite this, the *Shaw* Settlement yields
16 a higher *pro rata* share payment for the Settlement Class than the *pro rata* share
17 payment in the *Wallack* Settlement—compare \$5.07 per workweek for the *Shaw*
18 Settlement (NSA - \$75,700 / 14,892 workweeks) compared to \$2.85 in the *Wallack*
19 settlement. [Dkt. 74-5, Ex. E at ECF p. 12:27-28]. This is an excellent result in light
20 of the costs, risks, and delays of proceeding to trial.

21 It is estimated that approximately 63% of the Settlement Class (approx. 309
22 individuals) will receive class settlement payments ***in excess of \$100.00*** for a very
23 limited Covered Period. And, it is estimated that there are 195 Settlement Class
24 Members (approximately 40% of the Settlement Class) will receive the highest
25 payment of \$253.82. (Decl. Hatcher at ¶18).

26 Class Counsel’s settlement negotiations acknowledged the post-*Wallack*
27 Settlement landscape of the instant case, including the reduction in class size, relevant
28 time period, claims at-issue, and the risks and strengths of the case thereafter; the

1 information and documents obtained through formal and informal settlement-based
2 discovery; the common experiences of Plaintiff and the putative class members,
3 Defendant's denial of wrongdoing and the risks, expense, uncertainty, and delay
4 associated with bringing the action to trial, and to obtain class certification on a third
5 attempt. [Dkt. 73-2 at ¶ 9].

6 In light of the claims at issue and the *Wallack* settlement, class members were
7 still able to achieve significant recovery under the circumstances. [Dkt. 73-3 at ¶ 33];
8 [Dkt. 73-3, Ex. A, pg. 2]. This factor weighs in favor of final approval.

9 **3. Costs, Risks, and Delay Favor this Settlement Agreement**

10 The second factor in assessing the fairness of the proposed settlement is the
11 complexity, expense, and likely duration of the lawsuit if the parties had not reached
12 a settlement agreement. *Martinez*, 2021 U.S.Dist.LEXIS 260359, at *9; *Officers for*
13 *Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 624.

14 The Settlement alleviates inevitable costs, high risks, and delays for an excellent
15 and concrete resolution of \$150,000.00 in a common fund settlement that is exclusive
16 of employer-side payroll taxes. [Dkt. 73-2 at ¶¶ 9-16].

17 Proceeding in this litigation in the absence of settlement posed various risks
18 such as losing a motion for class certification (again), at trial or on appeal. [Id.].
19 Notably here, there have been two fully briefed motions for class certification that
20 were denied [Dkts. 28, 40], one successful motion for leave to amend [Dkt. 30], and
21 one motion to dismiss that was mooted by the instant proposed settlement [Dkt. 62].
22 Further, the impact of the *Wallack* settlement cannot be understated. This is an
23 excellent result in light of the costs, risks, and delays of proceeding to trial.

24 Thus, and because the Settlement Agreement eliminates the delay, costs, and
25 uncertainty of further litigation, this factor supports final approval. *Martinez*, 2021
26 U.S.Dist.LEXIS 260359, at *10; *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326,
27 331 (N.D. Cal. 2014) ("This factor supports final approval of this settlement because,
28 without a settlement, Plaintiffs would risk recovering nothing.").

1 **4. Risk of Maintaining Class Action Favors Final Approval**

2 This factor weighs in favor of approval because for the captive rest periods
3 claims, there were significant risks that this claim would fail as a matter of law if the
4 class was certified. Cases have held that merely requiring employees to remain on
5 premise for rest periods, without more, does not establish a rest period violation. *Bell*
6 *v. Home Depot U.S.A., Inc.* (E.D.Cal. Apr. 10, 2017, No. 2:12-cv-02499 JAM-CKD)
7 2017 U.S.Dist.LEXIS 55442; *Augustus v. ABM Security Services, Inc.* (2016) 2
8 Cal.5th 257, 270 (“Because rest periods are 10 minutes in length (Wage Order 4, subd.
9 12(A)), they impose practical limitations on an employee's movement.”).
10 Additionally, Defendant has already challenged class certification based on
11 predominance for these claims.

12 For the claim that Defendant underpaid meal period premiums at the hourly rate
13 of pay versus the regular rate of pay, there were risks that this claim would not be
14 certified or fail based on the merits. Defendant has already argued predominance
15 issues and manageability issues related to this claim, specifically:

16 To prevail on this claim, each putative class member must be able to
17 make two factual showings with regard to each meal period premium
18 payment: (1) AT&T was required to pay the premium because it failed
19 to provide a legally compliant meal period (rather than paying a meal
20 period premium that was not legally owed); and (2) the employee's
regular rate of pay for the workweek was greater than his or her hourly
rate. [Dkt. 42 at 27:16-28:4]; [Dkt. 42 at 27:3-31:14].

21 Should this claim have been certified, there is still a matter of proof that a meal
22 period premium was paid for a period of time that commissions, or other remuneration
23 to be included in the regular rate of pay, were paid.

24 For Plaintiff's claims that Defendant underpaid overtime by paying overtime
25 for commissions on a monthly basis rather than a weekly basis. That is, commissions
26 earned in a month would then be used to back pay overtime for that month. Plaintiff
27 claims that it should be calculated based on a weekly basis, pursuant to Labor Code
28 §§510, 1194 and the Wage Order, and as such there would be an underpayment of

overtime for workweeks that fell into both months because the regular rate of pay would be higher for that workweek given the portion of the commission from both months. Plaintiff also claims that other bonuses were not included in the regular rate of pay. This resulted in a small damages exposure because there is a minimal change to the regular rate of pay. Defendant has already challenged that its regular rate and overtime payments were legal because the commission overtime payments were calculated based on a value that could be attributable to the time earned (i.e. the month), [Dkt. 42 at 12:5- 11]; and that the other alleged payments not included in the regular rate of pay were non-discretionary and thus were not required to be included in the regular rate of pay. [Dkt. 42 at 12:12-13:3]. Defendant further challenged that these claims do not raise common issues with common answers. [Dkt. 42 at 24:3-27:12].

There was an inherent risk in proceeding to trial with these class claims, thus this factor weighs strongly in favor of final approval. *See Judson v. Goldco Direct, LLC* (C.D. Cal. June 11, 2021) 2021 U.S.Dist.LEXIS 258173, at *11-12 (ruling that a defendant’s opposition to the motion to certify class action posed a risk to maintaining the class through trial that favored final approval); *Willner v. Manpower Inc.*, No. 11-CV-02846-JST, 2015 WL 3863625, at *3 (N.D. Cal. June 22, 2015) (holding that “if the settlement is not approved, ‘there is risk that the Court may deny class certification or, following initial certification, subsequently decertify the class based on unanticipated individualized issues or manageability concerns.’”) (citation omitted).

5. The Amount Offered in Settlement Favors Final Approval

This factor favors final approval because the amount offered in Settlement is a significant value compared to Defendant’s reasonable liability and damages exposure. “[T]he very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes.” *Martinez*, 2021 U.S.Dist.LEXIS 260359, at *11; *citing Officers for Justice*, 688 F.2d at 624 (internal quotations omitted). “[T]he proposed settlement is not to be judged against a hypothetical or speculative measure of what

1 might have been achieved by negotiators.” *Id.* Rather, the settlement amount must
2 account for the risks of further litigation and trial, as well as expenses and delays
3 associated with continued litigation. *Id.*

4 **a) Significant Value for Class Claims Achieved**

5 Given the time period represented by the Covered Period, compared to the
6 statute of limitations after the *Wallack* settlement, the Settlement represents significant
7 value for the remaining class claims at-issue in this case. *See* [Dkt. 73-1 at ECF p.
8 24:24-28:15]. Thus, the \$150,000.00 Class Settlement represents significant value for
9 the narrowly tailored release of claims in this case.

10 **b) Significant Payments**

11 The Settlement applies to approximately 489 individuals and, as a gauge, yields
12 an “average” class member payment of **\$154.40** (NSA \$75,500.00 / Class Size – 489)
13 for the limited 11 month and 9 day time period or 49 weeks (i.e. the Covered Period),
14 subject to the *pro rata* calculation for Settlement Class Member’s Class Member
15 Payment. This is an excellent result based on the class size and claims at-issue in this
16 Action after the *Wallack* settlement. [Dkt. 73-2 at ¶ 13]; (Decl. Hatcher at ¶¶ 18, 19,
17 20). It is estimated that approximately 63% of the Settlement Class (approx. 309
18 individuals) will receive class settlement payments **in excess of \$100.00** for a very
19 limited Covered Period. And, it is estimated that there are 195 Settlement Class
20 Members (approximately 40% of the Settlement Class) will receive the highest
21 payment of \$253.82.

22 **c) Non-collusive, Arm’s Length Negotiations**

23 This Settlement Agreement has been negotiated at arm’s length after a highly
24 contested litigation, after preliminary approval was granted for the *Wallack*
25 settlement, and signed after the *Wallack* settlement was finally approved. [Dkt. 73-2
26 at ¶¶ 9-12]; *See* [Dkts. 28, 30, 40, 62, 74-3, Ex. C]. The conduct of the negotiations
27 was appropriate to protect the Settlement Class Members’ interests. [Dkt. 73-2 at ¶ 9].

28 In *Rodriguez v. West Publishing Corp.*, 563 F.3d 948 (9th Cir. 2009), the Ninth

1 circuit expressly opined that courts should defer to the “private consensual decision
2 of the [settling] Parties.” *Id.* at 965, citing *Hanlon*, 150 F.3d at 1027. The primary
3 reason for deferring to such settlements is the experience of counsel and the parties,
4 which factors are present here:

5 ...the court's intrusion upon what is otherwise a private consensual
6 agreement negotiated between the parties to a lawsuit must be limited to
7 the extent necessary to reach a reasoned judgment that the agreement is
8 not the product of fraud or overreaching by, or collusion between, the
9 negotiating parties, and that the settlement, taken as a whole, is fair,
reasonable and adequate to all concerned. *Id.* at 965, quoting *Officers for
Justice v. Civil Serv. Com.*, 688 F.2d 615, 625 (9th Cir. 1982).

10 The *Rodriguez* court “put a good deal of stock in the product of an arms-length,
11 non-collusive, negotiated resolution, and has never prescribed a particular formula by
12 which that outcome must be tested.” *Rodriguez v. West Publishing Corp.*, 563 F.3d
13 948, 965 (citations omitted). The proposed settlement here is the product of arm’s
14 length negotiations.

15 The amount offered in Settlement for the class claims constitutes *significant*
16 *value* for Defendant’s potential exposure and the class Settlement allocations
17 appropriately distribute funds consistent with the strengths and risks of the class
18 claims in exchange for a narrowly tailored release of class claims in this case. [Dkt.
19 73-2 at ¶ 12-14]. Accordingly, this fact favors final approval. *See Martinez*, 2021
20 U.S.Dist.LEXIS 260359, at *11-13 (noting that while settlements will not make most
21 class members completely whole, class members must discount their claims to obtain
22 a certain and timely recovery, rather than bear the significant risk and delay associated
23 with further litigation).

24 **6. The Extent of Discovery Completed and Stage of Proceedings**
25 **Favors Final Approval**

26 This factor requires the Court to gauge whether Plaintiff had sufficient
27 information to make an informed decision about the merits of her case. *Martinez*, 2021
28 U.S.Dist.LEXIS 260359, at *13. The more discovery that has been completed, the

1 more likely it is that the parties have “a clear view of the strengths and weaknesses of
2 their cases,” and the more heavily this factor weighs in favor of final approval. *Id.*;
3 citing *Young v. Polo Retail, LLC*, No. C 02-4546 VRW, 2007 WL 951821, at *4 (N.D.
4 Cal. Mar. 28, 2007) (internal quotation marks omitted).

5 This factor favors final approval as Plaintiff Shaw and Class Counsel conducted
6 sufficient discovery and investigation to prepare for class certification and trial in this
7 action. This includes, but is not necessarily limited to, obtaining responses to two sets
8 of Request for Production of Documents; two sets of Interrogatories; conducting two
9 separate depositions of Defendant’s Rule 30(b)(6) deponents; obtaining over a
10 thousand pages of documents from Defendant; and timekeeping and payroll records.
11 collaboration of Class Counsel and Plaintiff that the instant settlement was reached.
12 [Dkt. 73-2 at ¶ 10].

13 Accordingly, through this extensive discovery and motion practice in this
14 action, Class Counsel were well positioned to evaluate the strengths and
15 vulnerabilities of the claims and to engage in settlement discussions that eventually
16 led to this settlement. It is based on the substantial efforts, investigation, and
17 collaboration of Class Counsel and Plaintiff that the instant settlement was reached.
18 [Dkt. 73-2 at ¶¶ 9-16].

19 The record clearly demonstrates that Plaintiffs possessed sufficient information
20 to make an informed decision about the merits of the case and were on track to take
21 these claims to trial at the time of the mediation. Further, as shown *supra*, Plaintiffs
22 had a clear view of the strengths and weaknesses of the claims. This factor favors final
23 approval. *Martinez*, 2021 U.S.Dist.LEXIS 260359, at *13-14 (find this factor favored
24 approval based on less formal discovery and litigation).

25 **7. Experience and Views of Counsel favors Final Approval**

26 Class Counsel is experienced in wage and hour class litigation and has
27 successfully litigated numerous class actions and complex cases. [Dkt. 73-2 at ¶¶ 2-7,
28 19]. The proposed settlement is fair, reasonable, and adequate given the known facts

1 and circumstances. [Dkt. 73-2 at ¶¶ 14, 16]. Class Counsel has vigorously and
2 comprehensively investigated the class claims and litigated the class claims, since the
3 case's initiation in August 2019. [Dkt. 73-2 ¶¶ 9-12]; [See fully briefed motions at
4 Dkts. 28, 30, 40, 62]. Class Counsel relied on this extensive experience when
5 negotiating the proposed settlement, and throughout the duration of the litigation.
6 [Dkt. 73-2 at ¶¶ 8-16]. This factor favors approval.

7 **8. Presence of Government Participant Favors Final Approval**

8 Here, Defendant is not a government participant, although given the weight of
9 the other factors, there is still a significant balance that suggests that the settlement is
10 fair, reasonable, and adequate.

11 **9. The Class Members' Reaction Favors Final Approval**

12 Here, the Settlement Class unanimously endorses the Settlement. No Settlement
13 Class Members have opted out or objected to the Settlement terms. (Decl. Bridley at
14 ¶ 11). The absence of a large number of objections to a proposed class action
15 settlement raises a strong presumption that the terms of a proposed class action
16 settlement are favorable to the class members. *Martinez*, 2021 U.S.Dist.LEXIS
17 260359, at *15-16; citing *Arnold v. Fitflop USA, LLC*, 2014 WL 1670133, at *8 (S.D.
18 Cal. Apr. 28, 2014) (concluding that the reaction to the settlement “presents the most
19 compelling argument favoring settlement”). This is an excellent result in light of the
20 costs, risks, and delays of proceeding to trial. Accordingly, this factor weighs strongly
21 in favor of final approval. *Martinez*, 2021 U.S.Dist.LEXIS 260359, at *15-16.

22 Based on the foregoing, the Court should Grant final approval.

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1 **VI. CONCLUSION**

2 Accordingly, Class Representative respectfully requests that the Court GRANT
3 final approval of the proposed settlement and enter the proposed Final Approval Order
4 submitted herewith, and for such additional relief as this Court should deem proper.
5

6 DATED: September 15, 2023

Respectfully submitted,
7 **THE MYERS LAW GROUP, A.P.C.**

8
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